IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1628 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

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4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANGABEN D/O BHAILALBHAI L. PARMAR

Versus

COMPETENT OFFICER & ADDL COLLECTOR

Appearance:

MR M.C.Bhatt, for Petitioner No. 1-2/4
Mr. Amit Kotak, ASSTT. GOVERNMENT PLEADER
for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 17/10/2003

ORAL JUDGEMENT

This petition has been filed on behalf of four heirs of Kashiben. Form no. 6(1) under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the "Act") was submitted by the petitioner. The Competent Authority in its order dated 28th December, 1983 has taken a note that the land of survey nos. 485, 495/2 and 624/6 of village Gotri was received by Kashiben and Gangaben on the basis of the Will dated 26th October, 1959 executed by their father. Their names were entered in the mutation entry no.1041 dated 12.3.64. Kashiben died on 13.11.1972. The heirs of Kashiben were mutated vide entry no. 2207 dated 5.1.1981. It is also stated that the land in dispute had already been exempted by the State Government under section 20 of the Act vide order dated 23rd May, 1979. One advocate Mr. Munshi moved an application on behalf of this Gangaben to dispose of the case. The Competent Authority finding a kutcha hut on the land of survey no. 624/6, without permission held exemption as cancelled. In that regard, as per condition no. 4 of exemption under section 20 of the Act, if any illegal construction is made in the land for which agricultural exemption was granted, exemption would be treated as automatically cancelled. Accordingly, exemption was cancelled in respect of the land of survey no. 624 in which Kutcha hut was constructed, while exemption was continued in respect of survey nos. 485 and 495/2. The declarant Gangaben was held to be entitled to retain the land of 1500 sq.mtrs. as holding one unit vide order dated 28th December, 1983.

2. The contention of the learned counsel for the petitioner is that the copy of this order date 28th December, 1983 was not sent to the heirs of deceased respondent Kashiben as required under section 9 of the Act. Hence, the petitioners, including the heirs of the deceased petitioner Kashiben filed an appeal being appeal no. 58 of 1985 before Urban Land Tribunal at Ahmedabad. The appeal has been dismissed on the ground that the Government had issued notification under section 10(3) whereby the land in dispute had been vested in the Government free from all encumbrances with effect from 5.7.1984 and relying upon the decision of the Full Bench of this Court in the case of Shah Jitendra Nanalal vs.Patel Lallubhai Ishverbhai and others reported in 25 GLR, 1001 wherein it is observed that once the land vests

completely in the State Government free from all encumbrances, there is no question of invoking the "exemption" clause under section 20(1)(a) and (b); but until then, there is a right to move the Government for exemption and there is an "obligation" on the Government to "exempt" the land in case the conditions which warrant the exemption sought are satisfied. That ratio was relied upon in another decision in Special Civil Application no. 120 of 1984 decided on 15th February, 1984 though it is mentioned that the copy of the impugned order dated 28th December, 1983 was collected by the advocate of the appellants in person on 2.1.1984, but the heirs of the deceased petitioner Kashiben were not being represented by advocate Mr.Munshi. There is nothing on record to show that any advocate was representing the case of the heirs of the deceased Kashiben. The appeal was filed on 22nd March, 1985 though the impugned order is dated 28th December, 1983. Under the provisions of law, the Competent Authority is required to send a copy of the final statement to all concerned persons. In the present case, that copy was not sent to any of the heirs of Kashiben. The Tribunal also held that the appeal was barred by limitation. The learned counsel for the petitioner submitted that it is not an absolute law once the notification under section 10(3) is issued, even if that notification is illegal, the claim of the person concerned cannot be considered. In this respect, he relied on the decision of this Court in the case of Dahyabhai Manorbhai Patel vs. The Competent Authroity and Additional Collector, Unit no.2, Vadodara reported in 1987(2) GLR,1396, wherein it has been held that section 33 provides that any person aggrieved by an order made by the Competent Authority under the Act may file appeal within a period of 30 days from the date on which the order is communicated to the aggrieved person. Such an order should not be an order under section 11 or sub-section (1) of section 30 of the Act. The legislature has also conferred power upon the appellate authority to condone delay in filing an appeal if it is shown that the appellant was prevented by sufficient cause from filing the appeal within time. It is not provided under section 33 of the Act that appeal shall be maintainable only if the same is filed before the publication of declaration under section 10(3) of the Act. On the basis of the proposition of law laid down by this Court, the learned counsel for the petitioner submitted that as the land has already been exempted under section 20 of the Act and that exemption has not been withdrawn by the State Government under sub-section (2) of section 20 of the Act. As such, the authorities were not entitled to cancel the exemption, particularly

the exemption can be withdrawn by the State Government only under sub-section (2) of section 20 of the Act and that could have been done only after giving a reasonable opportunity of being heard the parties concerned. Without giving an opportunity of hearing, the exemption already granted cannot be cancelled or withdrawn by any authority including the State. In the present case, there is nothing on record to show that the exemption granted by the State Government was withdrawn at anytime even before filing the appeal before the appellate Tribunal, meaning thereby that the heirs of the deceased petitioner were under legitimate impression that the disputed land had already been exempted from the provisions of the Act. Therefore, unless any notice is issued to them, they are not required to do anything in their case before the Competent Authority or before any other authority. Therefore, they were not required to remain present or file any application before any authority regarding their claim. The Appellate Authority has not considered at all in this respect. While the Competent Authority has considered that the exemption granted under section 20 of the Act will stand cancelled if any term of the order is violated. As one Kutcha hut was constructed on the land of survey no. 624/6, the exemption granted was cancelled, though under the law, that exemption could not have been withdrawn or cancelled by the appropriate authority. That could have been done by the State Government under the provisions of section 20(2) of the Act after giving an opportunity of hearing to the parties even if some term of exemption is violated.

3. Considering the facts and circumstances of the case, it appears that I am not recording a finding that the appeal on behalf of the heirs of the deceased co-owner Kashiben was filed before the Tribunal and the Tribunal has rejected their appeal wrongly considering that the copy was served through advocate Munshi, but that advocate was never engaged by the heirs of the deceased Kashiben. There is nothing on record to show that copy of the final statement was served on the heirs of co-owner deceased Kashiben. On the contrary, from the order itself, it appears that the copy was sent to Gangaben by registered post, but copy was not sent to any of the heirs of the deceased co-owner. If the copy of the order passed under section 9 has not been sent to the owner, if the appeal is filed that will be treated as filed within time and the order passed by the Tribunal would not be sustainable in the eye of law.

4. So far as the claim of Gangaben is

concerned, the contention of the learned counsel for the petitioner is that the exemption had already been granted on 23rd May, 1979 and that exemption is not cancelled or withdrawn under section 20(2) of the Act and therefore, the order passed by the Tribunal is apparently illegal and it requires to be quashed and set aside.

5. In view of the above, whether the copy of the final order was served on the heirs of the deceased owner as required under section 9 of the Act and also regarding limitation, the service of notice is required to be established on a particular date for the computation of limitation for filing an appeal before the Tribunal. Other contentions cannot be decided by this Court in absence of certain questions of fact as this Court cannot decide the question of fact unless there is sufficient material on record. Even then this Court should refrain to record a finding in respect of question of facts and those questions of facts can be determined only on the basis of the material or evidence led by the parties. In absence of appropriate and sufficient material before this Court, I am not inclined to record any finding regarding claims of the petitioner.

6. As a result of the above discussion, I am of the view that the impugned order passed by the Tribunal is required to be quashed and set aside and the matter should be remanded to the Tribunal.

7. In the result, this petition is allowed. The order dated 21.12.85 passed by the Urban Land Tribunal, Ahmedabad is hereby quashed and set aside. The matter is remanded to the Tribunal for a decision of question of facts afresh in accordance with law. It is informed by the learned advocate for the petitioner that after repealing of the Urban Land (Ceiling and Regulation) Act, 1976 there is no Tribunal in existence to decide the matter in dispute. Considering the facts and circumstances, the Chief Secretary, State of Gujarat is hereby directed to constitute Urban Land Tribunal only for the purpose of decision of this mater within a period of three months from the date of the receipt of the writ of this Court. The Tribunal so constituted will decide the question of fact as well as legal questions agitated before this Court in accordance with law within three months thereafter treating the appeal as maintainable and within limitation. Rule made absolute accordingly with no order as to costs.
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